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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,715	11/09/2001	Chandrashekhar P. Pathak	2962.16US01	4146

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EXAMINER

MOHAMED, ABDEL A

ART UNIT PAPER NUMBER

1653

DATE MAILED: 04/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/010,715	Applicant(s) PATHAK ET AL.	
	Examiner Abdel A. Mohamed	Art Unit 1653	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 March 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 27 January 2005. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1-35.
- Claim(s) withdrawn from consideration: _____.

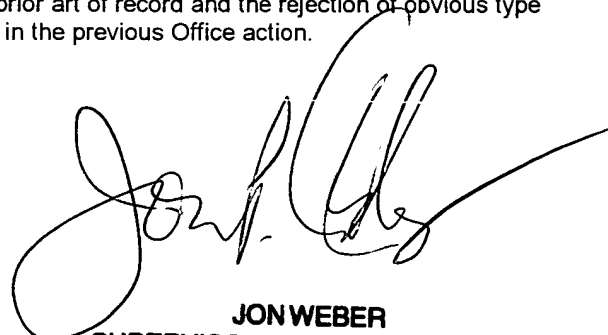
AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☒ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: The rejections under 35 U.S.C. 103(a) over the prior art of record and obvious type double patenting are maintained. The remarks, declaration under 37 CFR 1.132 and the attachment of the Food and Drug Administration Premarket Approval of FOCAL SEAL (the PMA) filed on 03/28/05 are acknowledged, entered and considered. It is noted that on paragraph 5 of the declaration, Applicant states that it is my opinion that the dyes used as photoinitiators in the photoinitiation process of the 5,410,016 patent are bleached during that process. After bleaching the dyes are not effective for use as a visualization agent in the hydrogel. The dyes are used to absorb laser light that causes the dye to form a free radical to initiate photopolymerization. This process consumes the photoinitiators so that it is no longer effective as a dye. However, the above statement as admittedly acknowledged is Applicant's opinion. There is no factual evidence or data to show at what percentages the process consumes the photoinitiators. Is it at 100%? and if so, what about excess? Also, what about the product? Is the product not visualization agent? Thus, there is no factual evidence or data to address the above questions, except for Applicant's opinion. With respect to paragraph 6 of the declaration, Applicant asserts that the FOCAL SEAL, which is covered by '016 patent, has a pink color before photoinitiation, however, by a process of photopolymerization, forms hydrogel that is "clear" and for support cites PMA, page 9, lines 3-4 and page 22, second paragraph. Contrary to Applicant's assertion, it is the Examiner's position that "clear" does not mean colorless. Further, in view of the claims language "comprising", the limitations argued by Applicant are not in the claims because the term "comprising" does not limit the claims to the specifics as argued by Applicant and does not exclude what is encompassed and taught by the prior art. Therefore, the rejection under 35 U.S.C. 103(a) over the prior art of record and the rejection of obvious type double patenting for claims 1-35 are maintained for the same reasons discussed in the previous Office action.



JON WEBER
SUPERVISORY PATENT EXAMINER